(1) (3)

M. (Cri.) P. 182 /2007

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

~~Cr.M.P. No /2007~~

Cr.M.P. 61/2007

(Restoration application for M.Cr.C No 573/2006)

Applicants

1. Devashish Majumdar aged 35 years S/o Arvind Majumdar

2. Arvind Majumdar aged 66 years S/o Shri S.C. Majumdar

3. Dipanker Majumdar aged 30 years S/o Shri Dipanker Majumdar

(All above R/o Salaya Para, near Shiv Mandir Police Station/ P.O./ District Kanker (C.G))

Versus

Non- Applicants

1. State of Chattisgarh Through S.H.O Mahila Thana, Raipur (C.G)

2. Smt. Ratna Majumdar W/o Shri Devashish Majumdar

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APPLICATION UNDER SECTION 482 CRIMINAL PROCEDURE CODE

Restoration Application for M.Cr. c No.573/2006 Dismissed for Non-Prosecution on 23/8/2006

(13)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... G.M.P.No. 61/07 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

1-3-2007

Shri Uttam Pandey, counsel for the applicants.

Shri Sanjay S. Agrawal, Addl. Public Prosecutor/Govt. Advocate for the State/respondent No.1.

None for respondent No.2.

Heard.

This is an application for restoration of M.Cr.C.No.573 of 2006 (**Devashish Majumdar & Others vs. State of Chhattisgarh & Another**) which was dismissed for want of prosecution on 23-8-2006. Hon'ble the Apex Court while rendering judgment in the matter of **State of West Bengal and others, Vs Sujit Kumar Rana (AIR 2004 SC 1851)**, in para 31 and 32 observed as below :

> 31. The High Court cannot, thus, in such a situation exercise its jurisdiction under Section 482 of the Code of Criminal Procedure. The said provision reads thus :
> "482. Saving of inherent power of High Court -- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order made under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."
> 32. From a bare perusal of the afore mentioned provision, it would be evident that the inherent power of the High Court is saved only in a case where an order has been passed by the criminal Court which is required to be set aside to secure the ends of justice or where the proceeding pending before a Court amounts to abuse of the process of Court. It is, therefore, evident that power under Section 482 of the Code can be exercised by the High Court in relation to a matter

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

pending before a Court; which in the context of Code of Criminal procedure would mean 'a criminal Court' or whence a power is exercised by the Court under the Code of Criminal Procedure. Once it is held that the criminal Court had no power to deal with the property seized under the Act, the question of the High Court's exercising its jurisdiction under Section 482 of the Code of Criminal Procedure would not arise.

Section 482 of the Code of Criminal Procedure (*for short "the Cr.P.C."*) does not bar filing of fresh application if earlier one has been dismissed for want of prosecution. In view of law laid down by Hon'ble the Apex Court in the case of **State of West Bengal** (supra) and provisions contained in Section 482 of the Cr.P.C., applicant should have filed application afresh, instead filing an application for restoration of earlier application which was dismissed on 23-8-2006. It is directed that applicants, if so advised, may file application afresh, under Section 482 of the Cr.P.C. as second application as against first dismissed on 23-8-2006 for want of prosecution.

Learned counsel for the applicants prays to return certified copy of the orders annexed along with the petition.

Considered.

Certified copy of the orders be returned to him on substitution by photocopy of the same within 15 days from today.

With the aforesaid direction, the application (Cr.M.P.No.61 of 2007) is dismissed.

Certified copy as per rules.

Sd/-
V.K. Shrivatava
Judge

(पीछे देखिये)